

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

WATSON VALVE SERVICES, INC.,

DEBTOR.

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§
§
§
§

CASE NO. 20-30968

CHAPTER 11

**TEXAS CAPITAL BANK, N.A.'S MOTION FOR ORDER DIRECTING
INSURANCE CARRIER TO PAY INSURANCE PROCEEDS RELATED
TO THE REAL PROPERTY COMMONLY KNOWN AS 4512 STEFFANI
LANE, SOLELY AND DIRECTLY TO TEXAS CAPITAL BANK, N.A.**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO: THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE

Texas Capital Bank, N.A. ("Texas Capital"), hereby files its *Motion for Order Directing Insurance Carrier to Pay Insurance Proceeds Related to the Real Property Commonly Known as 4512 Steffani Lane, Solely and Directly to Texas Capital Bank, N.A.* (the "Motion"). In support of the Motion, Texas Capital would respectfully submit as follows:

I. INTRODUCTION

1. Through the Motion, Texas Capital seeks the entry of an order authorizing and directing the debtor's insurance carrier, United Fire Lloyds ("United"), to pay certain insurance proceeds solely and directly to Texas Capital. These insurance proceeds are related to damage to certain real property and improvements that the debtor leases from 4512 Steffani Property, LLC. Texas Capital financed 4512 Steffani Property, LLC's purchase of the real property and holds a first priority deed of trust lien on the same.

2. Pursuant to, among other things, the terms of the various loan documents between Texas Capital and 4512 Steffani Property, LLC, the terms of the debtor's lease, the terms of a certain subordination agreement entered into by the debtor, and the terms of the debtor's insurance policy covering the real property, Texas Capital is entitled to receive the insurance proceeds that United is prepared to pay on account of the damage to the real property and the improvements thereon. However, due to the circumstances, United has requested the entry of an order by the Bankruptcy Court directing its payment of the insurance proceeds. Thus, Texas Capital has filed the Motion seeking a "comfort" order for United.

II. JURISDICTION, VENUE, AND PREDICATE FOR RELIEF

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the requested relief is section 105 and 363 of title 11 of the United States code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code"), and rules 2002, and 9013 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III. CORE PROCEEDING

4. This is a core proceeding under 28 USC § 157(b)(2)(A) and (O). Since this is a core proceeding, the Bankruptcy Court has constitutional authority to enter final orders regarding

the Motion. Further, to the extent that the Court determines that it does not have authority to enter final orders on a portion of or all of the Motion, Texas Capital requests that the Court issue a report and recommendation for a final order to the United States District Court for the Southern District of Texas, Houston Division.

IV. PROCEDURAL BACKGROUND

5. On February 6, 2020 (the “**Petition Date**”), Watson Valve Services, Inc. (“**Watson Valve**” or “**Debtor**”) filed a voluntary petition seeking relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-styled bankruptcy case (the “**Valve Case**”).

6. Also on February 6, 2020, Watson Grinding & Manufacturing Co. (“**Watson Grinding**”) filed a voluntary petition seeking relief under chapter 11 of the Bankruptcy Code, thereby commencing bankruptcy case 20-30967, which is currently pending in the Bankruptcy Court for the Southern District of Texas, Houston Division (the “**Grinding Case**”).

7. On January 10, 2020, the Bankruptcy Court entered its *Order for Appointment of January 24 Claimants Committee* (the “**Committee Order**”) in the Grinding Case. [Bankruptcy Case No. 20-30967; Docket No. 25]. On or about February 21, 2020, the Office of the United States Trustee filed its *Notice of the Appointment of the Official January 24 Claimants Committee* in the Grinding Case disclosing appointment of the members of the Official January 24 Claimants Committee (the “**Committee**”). [Bankruptcy Case No. 20-30967; Docket No. 89].

8. On June 4, 2020, the Court entered its order approving the appointment of Robert Ogle as the chapter 11 trustee (the “**Valve Trustee**”) for the Valve Case. [Docket No. 221]. Also on June 4, 2020, the Court entered its order approving the appointment of Janet S. Northrup as the chapter 11 trustee (the “**Grinding Trustee**”) in the Grinding Case. [Bankruptcy Case No. 20-30967; Docket No. 331].

V. FACTUAL BACKGROUND

A. WATSON VALVE LEASES THE REAL PROPERTY LOCATED AT 4512 STEFFANI LANE

9. Watson Valve is a party to that certain Commercial Lease Agreement (the “**Lease**”) effective as of July 13, 2018, by and between Watson Valve, as tenant, and 4512 Steffani Property, LLC (“**Steffani, LLC**”), as landlord. The membership of Steffani, LLC is comprised of the following individuals: (1) Jason M. White, (2) Robert L. White, and (3) Rueben R. Soto.

10. The Lease relates to certain real property legally described as Restricted Reserve “A”, Block One (1), of Watson Warehouse, a subdivision in Harris County, Texas, according to map or plat thereof filed for record under Film Code No. 654270 of the Map Records of Harris County, Texas, and commonly known as 4512 Steffani Lane, Houston, Texas 77041 (the “**Leased Premises**”). A true and correct copy of the Lease is attached hereto as **Exhibit “A”**. Located on the Leased Premises are certain improvements utilized by Watson Valve for both office space and general operations (the “**4512 Building**”).

11. Under the terms of the Lease, Watson Valve is required to insure all buildings and structures on the real property, including the 4512 Building, against loss or damage from, among other things, fire in amounts of not less than full fair insurable value thereof. Exhibit A at p. 6. The Lease also provides that:

In the event of any damage to or destruction of the Leased Premises, Tenant shall adjust the loss and settle all claims with the insurance companies issuing such policies. The parties hereto do irrevocably assign the proceeds from such insurance policies for the purposes hereinafter to any institutional first mortgagee or to Landlord and Tenant jointly, if no institutional first mortgagee then holds an interest in the Leased Premises.

Exhibit A at p. 6.

B. 4512 STEFFANI PROPERTY, LLC'S LOAN TRANSACTION WITH TEXAS CAPITAL

12. On or about July 13, 2018, Steffani, LLC entered into a transaction with Texas Capital whereby it borrowed approximately \$1,423,750 from Texas Capital (the “**Loan**”). In conjunction with the Loan, Steffani, LLC executed various documents in favor of Texas Capital, including, but not limited to, a certain Loan and Security Agreement, a certain Promissory Note, a certain Deed of Trust, Security Agreement, Assignment of Leases, Assignment of Rents, and Financing Statement (collectively, the “**Loan Documents**”). True and correct copies of the Loan Documents are attached hereto as **Exhibit “B”**. The Loan Documents granted Texas Capital liens and security interests with respect to, among other things, the Leased Premises and the 4512 Building.

13. Pursuant to the Loan Documents, Steffani, LLC is required to insure all of the collateral granted to Texas Capital pursuant to the Loan Documents, including, but not limited to, the 4512 Building, and to name Texas Capital as an additional insured, mortgagee, and loss payee under any such policies of insurance. *See Exhibit B at p. 18.* As of April 1, 2020, the outstanding principal balance on the loan was \$1,379,199.26 (the “**Principal Loan Balance**”).

14. Among the Loan Documents is that certain Subordination, Nondisturbance and Attornment Agreement (the “**Agreement**”) effective July 13, 2018, entered into by Watson Valve, as tenant, Texas Capital, as lender, and Steffani, LLC, as landlord. Pursuant to the Agreement, Watson Valve, among other things, acknowledged that the Lease would at all times be subject and subordinate in each and every respect to the first mortgage lien of Texas Capital on the Leased Premises and the 4512 Building and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the same. *See Exhibit B at p. 67.*

C. INSURANCE COVERAGE

15. As of the Petition Date, Watson Valve was insured under United Policy No. 60419060 (the “**Insurance Policy**”), which provided various lines of coverage, including, without limitation, coverage for the 4512 Building (\$1.3 million limit), coverage for the business personal property located on the 4512 Premises (\$350,000 limit), and coverage for lost business income (\$225,000 limit).¹ A true and correct copy of the original Insurance Policy issued to Watson Valve that incepted on November 30, 2019 is attached hereto as **Exhibit “C”**.

16. The Commercial Property Supplemental Declarations (the “**Declarations**”) section of the Insurance Policy lists the parties holding additional interests in the following order: (1) Lenders Loss Payable – Texas Capital; (2) 1st Mortgagee – Texas Capital; and (3) Loss Payable – Steffani LLC. Exhibit C at p. 3.

17. Section C.2b.(1) of Endorsement CP 12 18 10 12 to the Insurance Policy, entitled “Loss Payable Provisions,” provides:

C. The following is added to the **Loss Payment** Loss Condition, as indicated in the Declarations or in the Schedule:

...

2. **Lender’s Loss Payable Clause**

...

b. For Covered Property in which both you and a Loss Payee have an insurable interest:

(1) We will pay for covered loss or damage to each Loss Payee *in their order of precedence, as interest may appear.*

¹ United’s counsel and Watson Valve’s counsel represented that business income coverage limits were increased from the original \$125,000 to \$225,000.

Exhibit C at p. 52 (emphasis added). Since Texas Capital is listed first on the Declarations as Lenders Loss Payable and second as 1st Mortgagee, both with respect to the 4512 Building, its interests in that building take precedence over any other interest until they are satisfied.

18. As the Court is aware, in the early hours of January 24, 2020, an incident occurred at the facilities of Watson Valve and Watson Grinding, which resulted in an explosion and fire that caused extensive damage. The 4512 Building was severely damaged as a result of the incident. In fact, counsel for United has advised that United is ready to pay policy limits in the amount of \$1.3 million on account of the damage to the 4512 Building. A true and correct copy of an email from counsel (Mike Dodson) for United is attached hereto as **Exhibit “D”**.

19. Given that Watson Valve is the policy holder and that Texas Capital and Steffani, LLC are both listed as parties holding additional interests in the Insurance Policy, United has requested that the parties work together to obtain an order from this Court directing to whom the insurance proceeds check should be made payable. *See Exhibit D.* Subsequent to the receipt of Mr. Dodson’s email, counsel for Texas Capital reached out to counsel for Watson Valve (Jarrod Martin), Steffani, LLC (Richard Fuqua), and the Committee (Joshua Wolfshohl and Aaron Power) regarding United’s request. Both Watson Valve and Steffani, LLC confirmed their support of the requested relief. However, prior to this pleading being filed the Valve Trustee was appointed. Subsequent to his appointment, Texas Capital, through counsel, reached out to the Valve Trustee and his counsel (Matt Okin) regarding the requested relief. Counsel for the Valve Trustee and the Committee have confirmed that their clients do not oppose the relief requested in this Motion.

VI. REQUESTED RELIEF

20. For the reasons set forth herein, Texas Capital seeks the entry of an order directing United to submit payment of the \$1.3 million in insurance proceeds related to the 4512 Building (the “**Insurance Proceeds**”) solely and directly to Texas Capital Bank.²

21. As explained above, Steffani, LLC is the owner of the Leased Premises and 4512 Building. However, Texas Capital holds a first priority deed of trust lien against the Leased Premises and the 4512 Building, pursuant to the Loan Documents. Watson Valve’s interest in the Leased Premises and the 4512 Building is merely that of a tenant. *See Exhibit A.* Moreover, the Lease is subject and subordinate to the rights of Texas Capital. *See Exhibit B at p. 67.*

22. As a condition of the Lease, Watson Valve is required to maintain insurance on the Leased Premises and the 4512 Building for the benefit of both Steffani, LLC and Texas Capital, as the institutional first mortgagee. *See Exhibit A at 6.* The express terms of the Lease require that the Insurance Proceeds be paid to any institutional first mortgagee. *See Exhibit A at p. 6.*

23. United has determined that the damage to the 4512 Building has resulted in a complete loss and is now prepared to make a payment equal to the full limits of the Insurance Policy related to real property damage. The proposed payment is strictly related to the 4512 Building and does not impact or erode any other lines of coverage under the Insurance Policy. As also explained above, Texas Capital is named as both the Lender Loss Payable and 1st Mortgagee in the Declarations to the Insurance Policy. *See Exhibit C at p. 3.*

24. Pursuant to the terms of the Insurance Policy, Watson Valve is not entitled to receive the Insurance Proceeds since the Principal Loan Balance exceeds the amount of the

² Of note, because the Principal Loan Balance exceeds the value of the Insurance Proceeds, the proposed payment of the Insurance Proceeds to Texas Capital will not enable Texas Capital to recover a windfall.

Insurance Proceeds. Moreover, both the Lease and Loan Documents contemplate that insurance proceeds related to any damage sustained by the 4512 Building would be paid to Texas Capital. Thus, under applicable Fifth Circuit law, the Insurance Proceeds are not property of Watson Valve's bankruptcy estate. *See Unsecured Creds. Disbursement Comm. v. Antill Pipeline Constr. Co. (In re Equinox Oil Co.)*, 300 F.3d 614, 618-19 (5th Cir. 2002) (in order to determine if insurance proceeds are property of the estate a court considers to whom the insurer would pay the proceeds in the absence of a bankruptcy proceeding).

25. Finally, the requested relief will not erode or affect any other line of coverage under the Insurance Policy and therefore will not result in any harm to Watson Valve or its bankruptcy estate and not opposed by Steffani LLC, United, the Valve Trustee, or the Committee.

VII. EXHIBITS AVAILABLE UPON REQUEST

26. Due to the voluminous nature of the Exhibits to the Motion, copies of the Exhibits are not being served to those parties not receiving the Motion *via* the Court's ECF noticing system. However, any party wishing to obtain electronic copies of any or all of the Exhibits may request copies by contacting undersigned counsel for Texas Capital by email.

VIII. CONCLUSION

27. As set forth above, the requested relief is warranted and proper under the circumstances. Therefore, Texas Capital respectfully requests the entry of an order directing United Fire Group to issue payment of the Insurance Proceeds solely and directly to Texas Capital and granting Texas Capital all such other and further relief, both at law and in equity, to which it may justly be entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Prior to filing *Texas Capital Bank, N.A.'s Motion for Order Directing Insurance Carrier to Pay Real Property Insurance Proceeds Solely and Directly to Texas Capital Bank, N.A.* undersigned counsel contacted (a) counsel for the January 24 Claimants Committee (Joshua Wolfshohl & Aaron Power), (b) counsel for United Fire Lloyds (Mike Dodson), (c) counsel for the Valve Trustee (Matt Okin), (d) counsel for 4512 Steffani Property, LLC (Dick Fuqua), and (d) counsel from the Office of the United States Trustee (Stephen Statham) to discuss the requested relief. As of the filing of the Motion, the Valve Trustee; United Fire Lloyds; 4512 Steffani Property, LLC; the January 24 Claimants Committee; and the United States Trustee do not oppose the requested relief.

/s/ Timothy A. Million
Timothy A. Million

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Texas Capital Bank, N.A.'s Motion for Order Directing Insurance Carrier to Pay Real Property Insurance Proceeds Solely to Texas Capital Bank, N.A.* was served on the parties on the attached Service List via the Courts' ECF noticing system (with exhibits) on June 22, 2020 and/or United States first class mail (without exhibits), postage prepaid, on June 22, 2020.

/s/ Timothy A. Million
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